

**State of Maine  
Special Education Due Process Hearing Decision**

Lincolntonville v. Parents, Case No. 01.133

REPRESENTING THE SCHOOL:       The School was not Represented by Counsel  
REPRESENTING THE PARENT:       The Parents were not Represented by Counsel  
HEARING OFFICER:                 Carol B. Lenna

This hearing was held and the decision written pursuant to Title 20-A, MRSA, 7207-B et seq., and 20 USC §1415 et seq., and accompanying regulations.

The case involves Student whose date of birth is dob. He resides with his parents who live in Lincolntonville, Maine. Student currently attends the Riley School, a local private, general-purpose school. He was placed there by his parents in 1994 at the beginning of second grade.

Student is eligible for special education services as a student with a learning disability. Testing obtained by the parents in 1999 and the school in March 2000 demonstrates a severe discrepancy between his aptitude and achievement in the areas of written expression, basic reading skills and math calculations, as well as severe deficits in understanding language. On May 1, 2001, the parents requested an independent educational evaluation at public expense. In a response, dated May 21, the school denied the request. The school then initiated this due process hearing to show that its evaluation was appropriate.

The parties met in a prehearing conference on June 19, 2001 to exchange documents and witness lists. The school introduced twenty-nine documents, numbered S.1-S.29; the parents introduced three documents, numbered P.1-P.3. The hearing convened on June 26. Five witnesses gave testimony.

Following is the decision in this matter.

**I. Preliminary Statement**

This hearing considers the evaluation needs of a xx year xx month old student who is eligible for special education services as a student with a learning disability. Testing obtained by the parents in 1999 and the school in March 2000 demonstrates a severe discrepancy between his aptitude and achievement in the areas of written expression, basic reading skills and math calculations, as well as severe deficits in understanding language.

On May 1, 2001, the parents requested an independent educational evaluation at public expense. It is their contention that the student's pattern of performance suggests that his learning issues go beyond those normally seen in students with a language-based learning disability. They argue that he requires further neuropsychological testing to assess brain-behavior relationships, and to rule out attentional problems and nonverbal learning issues.

In a written response, dated May 21, the school denied the parents' request for an independent evaluation at public expense. They contend that testing performed by the school is appropriate to diagnose the student's disability and sufficient to determine his special education and related needs. They have requested this hearing to demonstrate that the evaluation conducted by the school is appropriate, thereby relieving them of the obligation to reimburse the parents for an independent evaluation.

### **Issue**

Has the School Department conducted an evaluation that is appropriate to identify the student's special education and related service needs. If not, are the parents entitled to an independent educational evaluation at public expense.

### **Findings of Fact**

1. The student meets the criteria as a student with a disability in need of special education. He is diagnosed as a student with a learning disability. (Ex. S. 16)
2. The student currently attends a local, general-purpose private school where he has received his education since 1994. The parents do not currently request special education services from the public school, but have provided private tutors to work with the student. (Testimony Mother)
3. Since entering kindergarten in 1993, the student has undergone a number of evaluations that sought to determine his cognitive ability and current achievement level. The student's most recent educational achievement was assessed by Judith Schelble, at parent expense, in October 1999. Results on the Woodcock Johnson R: Tests of Achievement Form A (W/J-R), produced standard scores ranging from 51 ("extremely low" category), to 98 ("average" category), with the majority of test scores falling in the "extremely low" to "well below average" range in basic reading skills, and broad written language. The standard score in spelling, obtained from the Kaufman Test of Educational Achievement (K-TEA), was 68, also in the "extremely low" range. The evaluator determined that, based on test scores, the student demonstrated significant weakness in basic reading and spellings skills with "both areas currently four to five years below his actual grade placement". (Ex. S.19)
4. The student's mother gave consent in January 2000 for additional testing to be performed by school's evaluators. A psychological evaluation and a speech and language evaluation were conducted in March 2000. (Ex. 24, 18, 17; Testimony Costello)
5. The psychological evaluation was conducted on March 21, 2000 by a doctoral level licensed, certified school psychologist. The Woodcock-Johnson Tests of Cognitive Ability (WJ-R) and the Developmental Test of Visual-Motor Integration (VMI) were administered. The evaluator is trained and certified to administer

these tests. She chose tests from the Woodcock-Johnson Psycho-Educational Battery-Revised “[b]ecause the Tests of Cognitive Ability and the Tests of Achievement are co normed, [therefore] comparisons can be made between [the student]’s cognitive ability and achievement scores from (sic) previous testing [conducted by Ms. Schelble].” The evaluator did not re-administer any tests of educational achievement. She determined that results from the previous testing were reliable and valid, and used those results in her analysis of the student’s educational profile. She concluded that the student “demonstrates generally average range intellectual functioning with good expressive vocabulary and verbal and nonverbal reasoning”, but “demonstrates relative weaknesses in auditory processing, auditory short-term memory and visual-motor processing speed”. She went on to say that “poor phonological understanding and knowledge translates to deficiencies in decoding the written word for basic reading and spelling skills”, and “[p]oor short term memory has hurt his acquisition of math facts”. The evaluator recommended the PET consider “a formal evaluation for ADHD...” pointing out that “[w]eaknesses in sustaining attention affect short term memory functioning and the acquisition of skills”. (Ex. 18; Testimony Thurston)

6. The speech and language evaluation was conducted on March 24, 2000. The evaluation was conducted by a master’s level certified, licensed speech and language pathologist. The Language Processing Test-Revised, subtests of the Test of Language Development-Intermediate, the Test of Language Competence-Expanded Edition-Level 2, and the Language Processing Assessment-Revised Edition were administered. The evaluator is trained and certified to administer each of these tests. Test results showed the student exhibits a severe delay in understanding of language. “This delay grew more significant as the language presented became more abstract and language contexts became unclear”. [He] “also demonstrates significant difficulty with phonological awareness skills”. She opined that the student’s “semantic development will have a serious impact on his understanding of verbal and written language”. (Ex. 17; Testimony Barbetta)
7. The PET met on March 29, 2000. Using the results of the educational evaluation completed by the parents’ consultant, the psychological evaluation and the speech and language evaluation the PET determined that the student met the definition of a student with a learning disability. The parents participated in this meeting and agreed with this determination. (Ex. S-14, 15, 16; Testimony Costello, Barbetta)
8. An IEP was written to address the student’s special education needs. The parents elected not to access services through the public school at that time. (Ex. S-15; Testimony Mother)
9. In February 2001 the parents consulted with a private education specialist, Dr. Candace Bray. She recommended reevaluating the student in order to update testing results. (Ex. P.3, P.2; Testimony Mother)
10. In the early spring of 2001 the parents consulted with Dr. Julia Domino, PhD, LLC a licensed psychologist in private practice, to conduct a new evaluation of the student. (Ex. P.1, Testimony Mother)
11. On May 1, 2001 the parents wrote to the school requesting an independent educational evaluation at public expense. The school responded to the request in writing and convened a PET meeting to discuss the request on May 9. The PET determined, with the parents’ dissent, that further evaluations were not necessary. The school denied the parents’ request for an independent educational evaluation on May 21. (Ex. S.10, 9, 1, 3; Testimony Costello)
12. Within the past month the parents have obtained an independent educational evaluation at their own expense conducted by Dr. Domino. (Testimony Mother)

#### IV. Conclusions

**Has the school conducted an evaluation that is appropriate to identify the student's special education and related service needs? If not, are the parents entitled to an independent educational evaluation at public expense?**

If parents disagree with the results of an evaluation conducted by the school, they have the right to obtain an independent educational evaluation at public expense. If the school refuses to grant the parents' request, or refuses to pay for the independent evaluation, the school must initiate a due process hearing to demonstrate that its evaluation is appropriate. If the final decision of the hearing is that the school's evaluation is appropriate, the parents have the right to an independent evaluation, but not at public expense. [See Maine Special Education Regulations, Section 12. 5]

In this case the parents have not objected to the school's evaluation so much as they have expressed a wish for supplementary information, which they have obtained through a recently completed independent evaluation. They now request that the school pay for this evaluation. The school argues that its evaluation meets the criteria set forth in regulations and is therefore appropriate, relieving them of the obligation to fund an independent evaluation. Evidence supports the school's position that the evaluation completed in March 2000 meets the standard set forth in the regulations.

*When identifying the special education needs of students, the Pupil Evaluation Team shall make its determinations based on a full and individual evaluation of the student. The Pupil Evaluation Team shall ensure that the student is assessed in all areas related to the suspected disability... Valid and reliable instruments and techniques that yield a description of the student, as a learner shall be used. [Id, Section 9.2]*

*In conducting an evaluation, the school administrative unit shall...use a variety of assessment tools and strategies to gather relevant functional and developmental information...and [u]se technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors... Any standardized tests that are given to the student shall have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel who meet state licensure or certification standards, and are administered in accordance with any instructions provided by the producer of such tests... [Id, 9.5]*

The professionals conducting the evaluation for the school provided substantially complete and comprehensive reports of the student's educational profile. The evaluators meet state licensure and certification standards, used valid and reliable assessment instruments and techniques, and were qualified to administer and interpret the tests administered. The evaluators provided data upon which the PET could make a determination of eligibility and service needs. The PET, using the evaluation reports of Dr. Thurston and Ms. Barbetta, was able to determine that the student was a student with a learning disability. The evaluations provided the PET with extensive data about the student's strengths and deficits, and a picture of the degree to which he lagged behind his peers in educational achievement.

The parents' consultant, Dr. Bray, made numerous suggestions regarding the need to have more current educational information about the student. There is no question

that new and different evaluations might give the student's teachers an updated educational profile, and since the student has not been in the public school since 1994, it could not help but provide valuable information for the PET to develop a new plan for him. But, the fact remains, that regulations require the school to update testing only every three years. The school is well within that time period.

Although the independent evaluation was not presented for review at the hearing, it is apparently completed. Based on parent testimony it includes comprehensive information about the student's learning profile, processing problems and language deficits. There was no evidence presented that the evaluation generated information which was in disagreement with the school's conclusions. The independent evaluation may be more extensive, or may detail specific programming strategies not recommended in the school's evaluation. This, however, does not give the independent evaluation more weight, nor does it render the school's evaluation inappropriate. The evaluation information being sought by the parents' private education specialists does not differ significantly from that already known about the student from the school's evaluation, with one major exception. Does the student require assessment for attentional problems?

The PET considered the AD/HD evaluation question in March 2000 and rejected further evaluation at that time. The most recent school assessment of the AD/HD question was in the late summer of 1997. The school's evaluator, Dr. Thurston, felt that the results obtained from those checklists was inconclusive. She recommended in her evaluation report that the school conduct a formal evaluation for ADHD, because results "could point to additional strategies for helping [the student] with his academic difficulties". The PET considered this recommendation, but did not order the evaluation, reasoning that there was insufficient grounds at that time to order such an evaluation. I find their determination defensible. Members of the PET had little observed information to lead them to conclude that an AD/HD issue was impacting the student's ability to benefit from his education. The student was not being educated in the public school and none of his then present teachers provided input about possible indicators of AD/HD.

According to parents' testimony the independent evaluator concluded that the student carries a diagnosis of "ADD combined type". Since the evaluation, nor the evaluator, was presented as evidence, there is no way to consider that information in light of the PET's actions over a year ago. Should the parents' choose to make the independent evaluation available to the PET, the PET must review that information in developing the student's IEP. However, it does not support the parents' claim for an independent educational evaluation at public expense.

### **Ancillary Issue**

The PET met in March 2000 to review and make a determination of the student's eligibility "as a student with a disability". This determination was made primarily on the reports of the school's evaluators, Dr. Thurston and Ms. Barbetta. However, Dr. Thurston's data, in part, relied upon the educational testing obtained by the parent in late 1999. Dr. Thurston did not administer any educational achievement tests. She concluded that the testing conducted by Ms. Schelble, the parents' privately hired evaluator, was valid and reliable, and based on test instruments that are highly regarded by professional educators for determining educational achievement. In fact, Dr. Thurston chose her assessment instruments based on those test results, choosing to use the WJ-R Cognitive tests as a complement to the WJ-R Achievement Battery used by Ms. Schelble. Dr. Thurston incorporated those test findings in her report.

The school's determination of the student's eligibility as a student with a learning disability was based on the comparison of the results obtained by Dr. Thurston's evaluation and Ms. Schelble's. The school could not have reached a conclusion on the student's eligibility as a student with a learning disability without Ms. Schelble's, or some comparable, test results. This fact does not render the school's evaluation inappropriate, and does not support the parents' claim for reimbursement for the independent evaluation obtained in 2001. But, the school does have a responsibility for the costs incurred by the parents in obtaining the educational data gathered by Ms. Schelble. The school, therefore, is obliged to reimburse the parent for the Schelble evaluation.

### **Order**

If the parents make the independent educational evaluation conducted by Dr. Domino available to the school, the school shall convene a PET meeting in the beginning of the 2001-2002 school year, but no later than September 30, 2001, to review the results and conclusions of the evaluation, as they develop a current individualized education plan for the student. Documentation of compliance shall be a copy of the PET minutes to the Department of Education, with a copy to the parents and the Hearing Officer, no later than 15 days after the meeting.

Upon receipt of verifiable record of payment from the parents, the school shall reimburse the parents for the costs incurred by them in the production of the educational achievement report prepared by Julia Schelble. Documentation of compliance shall be in the form of a letter sent to the Department of Education, with a copy to the parent and the Hearing Officer no later than 30 days after the receipt of this decision.

Carol B. Lenna  
Hearing Officer

July 10, 2001